83-662

No. _____

Office-Supreme Court, U.S.
FILED
OCT 21 1983
ALEXANDER L. STEVAS,

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1983

Louis F. Gaines, Appellant

v.

Merchants National Bank &
Trust Company, Appellee

CIVIL RIGHTS APPEAL FROM
THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

JURISDICTIONAL STATEMENT

Louis F. Gaines, Pro Se
5337 North College Avenue
Indianapolis, Indiana 46220
317--283-4821

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1983

Louis F. Gaines, Appellant

v.

Merchants National Bank &
Trust Company, Appellee

CIVIL RIGHTS APPEAL FROM
THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

JURISDICTIONAL STATEMENT

Louis F. Gaines, Pro Se
5337 North College Avenue
Indianapolis, Indiana 46220
317--283-4821

QUESTIONS FOR REVIEW

One: If the Appellee used the Affirmative Action Program as a pretext to engage in racial discrimination towards the Appellant, or otherwise formed an agreement to racially discriminate against him, and if the trial testimony of the most similarly situated white employee revealed or gave proof that the Appellant were adversely treated with regards to pay, job duties, evaluations, and termination, for example; then did the Seventh Court of Appeals error in denying all relief on the grounds that the evidence reasonably supports the verdict of the "all white" jury?

Two: If the affect of the Appellee's agreement to racially discriminate against the Appellant or towards him either caused or played a role in causing

the Appellant to suffer either temporary or permanent injuries to the mind, and a permanent injury to the body, and if this circumstance can be correctly regarded as an "exceptional circumstance;" then did the Seventh Court of Appeals error in denying all relief from judgment?

Three: If, at the time of termination, the Appellee assured the Appellant that it would not give him a bad employment reference, and if, after the Appellant filed a racial discrimination complaint, the Appellee either refused to give out employment references, gave out distorted employment references, or gave out information that the Appellant had filed a racial discrimination charge against it; then did the district court dismiss this issue in error, if, at trial, respective employers refused to testify against the Appellee; and, did the Seventh Court of

Appeals error in allowing ruling of the district court on this issue to stand?

Four: If, during the trial and in the absence of the jury, the trial judge declared the Appellant to be "Mentally Ill," and "Incompetent;" and if, after the return of the jury, the Appellant were allowed to testify in his behalf, and if no other person or witness were allowed or required to testify under this circumstance, and if this circumstance can be correctly regarded as an "exceptional circumstance;" then did the Seventh Court of Appeals error in denying all relief from judgment?

Five: If the Appellant commissioned a previously unknown medical expert to objectively give evidence in the case, and if the expert concealed a conflict of interest in favor of the Appellee,

and if the expert came to trial on the pretext of going to testify in favor of Appellant, but actually testified against him, according to the district court; and, if as a condition to his participation in the case the expert subjected the Appellant to a test that is alleged to be racially bias against blacks, by other experts; then did the Seventh Court of Appeals error in denying relief from judgment, to this extent, on the grounds that the Appellant's assertion of fraud is without merit?

Six: If, at trial, the Appellant's attorney withdrew material evidence in favor of the Appellant, submitted all written medical evidence, concerning the ulcer, to the Appellee's attorney to determine the admissibility of such evidence; called hostile witnesses, and then refused to introduce them as "hostile,"

or impeach their credibility as fairness would normally require; if the attorney alsc tricked the Appellant into believing that he had talked to certain witnesses only to stand before the trial judge and admit that he had not talked to such witnesses; and if the attorney, still at trial, refused to notify the court that one of the Appellee's employees had refused to report to the court to testify, as required by the Appellant's subpoena; and if the Appellee's attorney were also aware of this "failure to show," but refused to bring the matter to the attention of the court too, and if this witness could have offered damaging testimony against the Appellee, as one employee did -- then did the Seventh Court error in denying all relief from judgment on the grounds that the Appellant's claim of misrepresentation is without merit,

or is too tenuous to have affected the outcome of the trial?

Seven: If, the trial judge declared the Appellant to be "Mentally Ill" and "Incompetent" during the trial, and a pauper after the trial; and if, within a period of one year from judgment, and at a time in which the Appellant were emotionally and more financially able to proceed upon appeal at his own expense, and in the form of pro se; the Appellant filed post-trial motions to obtain relief from an unfair judgment, as alleged; then did the Seventh Court of Appeals error in denying relief on the grounds that the motions were untimely filed?

Eight: If, at the time of the trial, the jury selection process unfairly excluded a large percentage of the blacks living in Marion County, Indiana; from

serving on jury duty, or if they were systematically excluded from jury duty at the time of the trial, and continued to be at the time in which a post-trial motion for relief, to this extent, was filed; then did the Seventh Court of Appeals error in denying relief, to this extent, on the grounds that the motion was untimely filed?

TABLE OF CONTENTS

COURT CASES

UNITED STATES CONSTITUTION

UNITED STATES CODES

RULES OF CIVIL PROCEDURE

RULES OF EVIDENCE

OPINIONS BELOW

The order of the Seventh Court of Appeals was entered on August 11, 1983; and the entry of the district court was entered on December 10, 1981. These and other related opinions are contained in the Appendix, beginning on Page 43. As provided by Rule 33.1(c), the text of these unpublished opinions will be indented, quoted in full, and single-spaced.

JURISDICTIONAL GROUNDS

In this civil rights appeal, post-trial motions were filed to obtain relief from the original judgment that was entered in error, as alleged. The jurisdiction of the Supreme Court to review this case is on the authority of Title 28, U.S.C., Sections 2101, and 2106.

As mentioned above, the order of the Seventh Court of Appeals was entered on August 11, 1983, and it represents the order that is sought to be reviewed. Orders respecting a rehearing do not apply, since the appeal process did not lead in that direction.

On or about September 6, 1983, the "Notice Of Appeal" was filed with the clerk of the United States Court of Appeals for the Seventh Circuit.

The following cases will help to sustain the jurisdiction of the Supreme Court to review this case: General Telephone Co., v. EEOC, 446 U.S. 318 (1980); McDonald & Laird v. Santa Fe Trail Transportation Co., 427 U.S. 273 (1976); and the State of Maryland v. Baltimore Radio Show, 338 U.S. 912 (1950).

CONSTITUTIONAL AND STATUTORY PROVISIONS

As provided by Rule 15.1(f), only the citation of the appropriate authority will be given at this point, since these provisions are lengthy. The pertinent text of each authority is contained in Appendix, beginning on Page 71.

United States Constitution:

Amendments: The Fifth, Eighth, and the Fourteenth.

United States Codes:

Title 28, Sections: 2106, 1861, and 1862.

Title 42, Sections: 1981, 1983, 2000e-2(a), 2000e-2(j), and 2000e-3(a).

Federal Rules Of Civil Procedure:

Rules: 9, 27, 59, and 60

Federal Rules Of Evidence:

Rules: 103, 104, 106, 401, 402, 403, 406, 607, 701, 702, and 803.

STATEMENT OF THE CASE

Pre-trial:

On June 17, 1974, the Appellee hired the Appellant, Louis F. Gaines, a black veteran, along with Ms. Hendricks, white; and Mr. Montieth, white; as management trainees for its Retail Banking Department. All three had at least a degree from a four-year college or university. On August 21, 1975, however, the Appellee fired the Appellant over an alleged customer complaint that was not investigated with the Appellant prior to firing him. The complaining customer was allegedly white, and female.

In May, 1975, for example, the Appellee held a branch meeting, and pledged

to support branch personnel against unreasonable customer complaints. Among others, Mr. Montieth, and the Appellant were also present.

In returning to August 21, 1975, the surprise element of the termination not only caused a severe shock to the Appellant's mind, but injuries to both the mind and body were by-products of this severe form of stress. The day after termination, for example, the Appellant operated in a daze. As he sat in his study, he looked around the room, and noticed the walls, and other familiar objects. From this observation, he was able to determine that he was not at work; he could recall being terminated, but he was unable to understand the reason why.

Within a period of 90 days, the Appellant began to lose track of time, and

would often ask his wife, Margo, to varify the day of the week; he slept more than usual, displayed a reduced interest in family life, and hobbies; and he was "running" red traffic lights, because he never saw them. The adverse treatment that the Appellee had caused the Appellant to willfully suffer had fully occupied his mind, and would continue to do so.

In October, 1975, the Appellant began to experience some stomach pain, but did not pay special attention to it. From this time on, the Appellant noticed an occasional black, or very dark stool, but gave no special attention to this either.

Combined with feelings of deep anger, a feeling of having been betrayed, and realizing that he was still unemployed in December, 1975, even though a sincere

effort had been made to find work; the Appellant began to fear that the Appellee was retaliating against him for having recently filed a timely racial discrimination charge against it. On December 15, 1975, the Appellant called the Appellee, to learn if they were retaliating against him for filing the racial discrimination charge, and they replied in the negative. See Page 103. Even though the Appellee denied that it was retaliating against the Appellant, his fear of such retaliation remained, and would continue to emerge at various times in the future.

In June, 1977, the Appellant was hospitalized for a period of nine days, to be treated for a bleeding ulcer. As partial treatment, the Appellant was given 64 ounces of blood.

By current medical standards, an ulcer is a permanent injury. Since the ulcer will serve as a constant reminder of how cruel the Appellee willfully treated the Appellant, "prolong anger," for example might prove to be a permanent psychic injury also.

On March 14, 1978, Doctor James A. Hunt, Psychiatrist, was commissioned to interview the Appellant, to help determine the cause or the most probable cause of the Appellant's ulcer. On March 24, 1978, Doctor Hunt released his findings. A copy of this letter is contained in the Appendix, see Page 87. The following is an excerpt of that letter:

> .... In summary if the history is valid it would appear that this man has functioned quite well until August, 1975. Following this he has had numerous symptoms of anxiety and depression which are probably related to his unstable employment situation. His symptoms of increased

> sleeping, decreased sexual drive and excessive fatigue are consistent with a depressive illness and this is frequently associated in a patient with ulcer disease....

To get a second opinion on the subject, Doctor Tord, Gastroenterologist, was commissioned. After doing a complete physical on the Appellant, the findings of Doctor Tord were released on April 11, 1978. The following is an excerpt of that letter, which can be found on Page 90, of the Appendix:

> .... Based on the results of this examination and the patient's statements, we can establish that he never experienced any serious stomach pain prior to August of 1975. He denied the consumption of intoxicating beverages.
>
> If his habits continued stable after that time, it is conceivable that some drastic changes could have taken place in his life pattern which could be indirectly contributory to an ulcer disease. With the exception of the patient's ulcer, his state of health is excellent.

Between the broad period of September, 1977, and October, 1978; the Appellant was allowed to review his personnel file, which was obtained through the process of discovery. Among such documents was a copy of an employment reference from the Appellee, to a potential employer of the Appellant. The following is an excerpt of the Appellee's reply; a full copy is provided on Page 104, of the Appendix:

> .... I further related to him that Gaines was unhappy with Merchants because of the termination and had filed a charge of discrimination against the bank.

Having the above statement fresh in mind, the Appellant was then subjected to a personality test, the Minnesota Multiphasis Personality Inventory, MMPI, by Doctor Larry M. Davis, Psychiatrist, on October 13, 1975; as a condition to participate in the suit against the

Appellee. Since Doctor Hunt's participation in the case was limited to the initial interview, Dr. Davis was then commissioned interview the Appellant, make a determination, and to testify at trial. Dr. Davis was previously unknown to the Appellant, and has never performed any medical services for the Appellant.

While the results of the MMPI are provided on Page 93, of the Appendix, the Appellant was not aware that other experts had concluded or alleged that the MMPI test is racially bias against blacks and other minorities, see Page 98, of the Appendix, for example.

The following excerpt of Doctor Davis' letter, dated November 6, 1978, is given; and a copy is provide on Page 95, of the Appendix:

.... To the extent that he

represents a paranoid personality, he was especially vulnerable to anxiety feelings of rejection and retaliation following termination by Merchants National Bank. In other words, his underlying personality structure predisposed him to an unusually severe response to being terminated. One of the manifestations of this severe response was the previously mentioned ulcer.

Lastly, a deposition was taken on the Appellee's Personnel Director, Mr. Klawun, on December 4, 1977. Mr. Klawun fired the Appellant on August 21, 1975, and because this represented the last time that Mr. Klawun saw the Appellant, he was asked the following question:

Q: Mr. Klawun, what was, as Personnel Director, Director of Personnel for the bank, what was your overall evaluation of Louis Gaines, both the pluses and minuses? P-50.

A: I liked Louis Gaines; nice fellow, nice personality, but he just failed in the management training program. P-50.

Trial:

In April, 1979, this case first came before the district court on the authority of Title 42, U.S.C., Sections 1981, 2000e-2, and 2000e-3; whereby, the Appellee was charged with racial discrimination in employment, with regards to duties, evaluation, pay, and termination; retaliation, and a fair compensation was sought for these violations, and damages for pain and suffering: psychic injuries, and an ulcer, a permanent injury, which is subject to bleed from time to time.

Agreement To Racially Discriminate:

As mentioned earlier, a deposition was taken on the Appellee's Personnel Director, Mr. Klawun, as of August 21, 1975.

> Q: What do you believe would have happened to Mr. Gaines in December 1974, if he was a white employee? P-18.
>
> A: He probably would have been terminated. P-18.

Q: And he was not terminated because he was black? P-18.

A: Basically, yes. P-18.

Q: What policy did they agree with again? P-46.

A: That we would continue working with Gaines, in an effort to get him to complete the program sucessfully. P-46.

Q: And the reason for this continued effort was because he was black? P-46.

A: Because he was black, yes. P-46.

At the time that the Appellee fired the Appellant, it had a total of 42 branch banks. Each branch bank was assigned a branch manager. All the branch managers were white. The Appellee also admits that at the time that it fired the Appellant, it had a total of about 1,200 employees in its work force. The Appellee also admits that of this amount, 1,200, only one black had been promoted to the title of "officer." In view of

all the above, reference Long v. Ford Motor Company, 496 F.2d 500 (1974); Setser v. Novack Inv. Co., 638 F.2d 1137 (1981); Simmons v. South Carolina State Ports Authority, 495 F. Supp. 1239 (1980); Williams v. Dekalb County, 577 F.2d 248 (1978); and Worthy v. U.S. Steel Corp., 616 F.2d 698 (1980). Also reference Title 42, U.S.C., Sections 1981, 2000e-2(a), and 2000e-2(j); as well as U.S. Constitution, Fourteenth Amendment.

Preferential Treatment: At trial, Mr. Montieth, the most similarly situated employee to the Appellant; testified that during the "Special 90-Day Project" that he and the Appellant served on, he received a serious customer complaint, that he was not fired, and that the complaint was investigated with him. In contrast, the Appellant allegedly received a serious customer complaint after the above

project was completed, and he was fired, even though the alleged complaint was never investigated with him prior to the termination, even though branch officials had previously pledged their support to the Appellant and others against unreasonable customer complaints, and even though this represented the first documented customer complaint, that was alleged to be serious, during his 14 months of employment. Mr. Montieth is white.

Two, during the "Special 90-Day Project," Mr. Montieth and the Appellant were to write a 60-day and a 90-day report. The Appellee made the Appellant believe, at all times during this project, that Mr. Montieth had written the required reports. At trial, however, Mr. Montieth admitted for the first time that he never wrote a single report. In contrast, the Appellee admits that the

Appellant wrote the required reports in in a timely, and a professional manner, and concluded that the Appellant's performance for the entire 90-day period was most gratifying. See Page 101.

Three, at trial, Mr. Montieth admitted that he received an annual raise in June, 1975. Still at trial, the Appellee also acknowledged that Mr. Montieth was given the annual raise in June, 1975, and added that the proper form was completed, and that the justification for the raise was written or stated on the form. In contrast, the Appellee admitted, at trial, that it denied the Appellant the same annual raise, and that the proper form was never completed, to show the reason or justification for denying the raise. The Appellant testified, at trial, that the raise was not only denied, but that he was never informed of the reason.

Four, still at trial, Mr. Montieth even testified that after the "Special 90-Day Project" had ended, about April 1, 1975; he received several performance evaluations, and that he was allowed to review each evaluation with each evaluator - prior to the time in which the evaluation was sent to the Appellee's Personnel Department. At trial, the Appellant testified that he too received several evaluations after the "Special 90-Day Project" had ended, that these evaluations were negative, that some were written by persons that never supervised him at any point during the evaluation period, and that he was <u>not</u> allowed to review any of the evaluations with any of the evaluators - prior to sending them to the Appellee's Personnel Department. Each evaluator testified, at trial, that he or she did <u>not</u> review the evaluation

with the appellant - prior to sending it to the Personnel Department. See Page 102.

For all the above, Items One through Four, reference Goff v. Continental Oil Co., 678 F.2d 593 (1982); McDonald & Laird, v. Santa Fe Trail Transportation Co., 427 U.S. 327 (1976); Winston v. Lear-Siegler, 558 F.2d 1266 (1977); and U.S. Postal Service Bd. Of Govs. v. Aikens, 75 L Ed 2d 403 (1983). Also reference Title 42, U.S.C., Sections 1981, 2000e-2(a), 2000e-2(j); and U.S. Constitution, Fourteenth Amendment.

Pain & Suffering: Doctor Tord, testified at trial that he could not say, as a fact, that the Appellee's termination of the Appellant caused the ulcer or played a role in causing it; nor, could he exclude the termination as the cause of the ulcer, or having played a role in

causing the Appellant to suffer an ulcer. Except for the ulcer, the Appellant's health is excellent; and, there is no evidence that the Appellant suffered from an ulcer prior to his termination in August, 1975. Since the Appellant does not smoke or drink, these factors could be ruled out as a possible cause. Doctor Tord also ruled out the Appellant's diet as a possible cause of the ulcer.

The Appellant's wife, Margo, testified that to the best of her knowledge, the Appellant did not have an ulcer prior to termination by the Appellee on August 21, 1975; that after termination, he slept more than usual, paid less attention to family life, was restless; and at certain times, the Appellant seemed to exist in another world.

In view of the testimony of Doctor

Tord, reference Farmer v. Carpenters, 430 U.S. 290 (1977); Gore v. Turner, 563 F.2d 159 (1978); Harris v. Richards Manufacturing Co., 511 F. Supp. 1193 (1981); and Humphrey v. Southwestern Portland Cement, 369 F. Supp. 832 (1973).

For the Appellant's wife's testimony, Rogers v. Exxon, 404 F. Supp. 324 (1975); the Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977). Finally, reference the Rules of Evidence, Rules 401, 402, 406, 701, and 702; and the U.S. Constitution, the Eighth Amendment.

Doctor Davis concealed a conflict of interest in favor of the Appellee, and came to trial on the pretense of going to testify in favor of the Appellant; but, actually testified against the Appellant. In private, and prior to the trial,

Doctor Davis informed the Appellant that he could see that the Appellant is under stress, and that he did not have any doubt in his mind that the Appellee is the cause of the Appellant's ulcer, or the most probable cause of the ulcer.

The conflict of interest is simple, and powerful: the chairman of the board for the Appellee, at the time of the trial, was also the chairman of the board of the hospital that currently employed Doctor Davis, at the time of the trial. This conflict of interest was not made known to the Appellant until after the trial. At any rate reference Chiarelle v. United States, 100 S. Court, 1108 (1980); Francis-Sobel, v. University of Maine, 597 F.2d 15 (1979); U.S. v. Spiegel, 604 F.2d 961 (1979); and Title 42, U.S.C., Sections 1981, 1983, and the Fifth and Fourteenth Amendments to the

U.S. Constitution.

Retaliation Issue: Prior to the trial, the Appellant's Attorney, Mr. Eaglefields, informed the Appellant that he had talked to the witnesses on this issue. When these persons were called to trial, each testified against the Appellant, or in favor of the Appellee. In response to this event, the district judge asked Mr. Eaglesfield if he had, in fact, talked to these persons, and he replied in the negative. Although their own documents contradicted their trial statements, this issue was dismissed on a motion for a direct verdict by the Appellee's attorney. Reference Goff v. Continental Oil Co., 678 F.2d 593 (1982); London v. Coppers & Lybrand, 644 F.2d 811 (1981); and Rutherford v. American Bank of Commerce, 565 F.2d 1162 (1977); and Title 42, U.S.C., Sections 1981, and

1983, 2000e-3(a), and the Fifth and Fourteenth Amendments of the U.S. Constitution. See Pages 103 through 106.

Misrepresentation: At trial, the Appellant's Attorney, Mr. Eaglesfield, made a relatively large number of serious mistakes, which reduced the Appellant's chances of prevailing. For example: (1), he obtained permission from the court to withdraw material evidence in favor of the Appellant; (2), he submitted all written medical evidence, concerning the ulcer, to the Appellee's Attorney, Mr. Johnstone, to determine the admissibility of such evidence, instead of allowing the court to decide the question; (3), he called hostile witnesses to testify in favor of the Appellant, and refused to introduce them as "hostile" witnesses, or made little or no attempt to impeach their credibility as fairness would require, see "Retaliation Issue," Page 23,

for example; (4), after Mr. Eaglesfield had accomplished all the above, Mr. Johnstone, approached Mr. Eaglesfield during the trial, and informed him that Mr. Scharffe was sick, and could not come to the trial, as commanded by the subpoena that the Appellant had issued on him. Mr. Scharffe was currently employed by the Appellee, and could have given damaging evidence against the Appellee. The Appellant asked Mr. Eaglesfield to bring the matter to the attention of the court, but he refused. Mr. Johnstone also refused to inform the court of Mr. Scharffe's alleged illness, as the reason for his refusal to appear in court, and testify. Reference H.K. Porter Company, v. Goodyear Tire & Rubber, 536 F.2d 1115 (1976); Hampton v. Hanrahan, 600 F.2d 600 (1979); Title 42, U.S.C., Sections 1981, and 1983; and Rules 104, 106, 401, and

607, of the Rules of Evidence.

Judicial Abuse Or Error: During the trial, Judge Dillin dismissed the jury, and declared the Appellant to be "mentally ill" and incompetent. After taking this action against the Appellant, the jury was brought back into the court, and the trial continued. Later in the trial, the Appellant was allowed to take the witness stand in his own behalf.

In light of the above, it is important to note that no other person or witness was required or allowed to testify or give evidence under the conditions that were imposed upon the Appellant by the court. This process did not provide the Appellant the right or opportunity to be meaningfully heard. Reference U.S. Constitution, the Fifth, Eighth, and Fourteenth Amendments. Also reference this

case: Evans v. Buchanan, 555 F.2d 373 (1977), as well as Seven Elves, Inc., v. Eskenazi, 635 F.2d 396 (1981).

Post-trial:

On May 14, 1979, 76-511-C; the Appellant filed an affidavit in support of a pro se motion to proceed upon appeal in forma pauperis. On June 3, 1979, a motion to perpetuate the testimony of witnesses, and a motion for the production, inspection, and reproduction of documents were filed; reference Rule 27-(b), of the Rules of Civil Procedure. On June 22, 1979, the district court denied the above motions on the grounds that they were not taken in good faith. See Page 39.

On July 20, 1979, 79-8074; the Appelland filed a pro se motion to proceed upon appeal in forma pauperis with the

Seventh Court of Appeals. On Page 47 of the "Motion To Appeal In Forma Pauperis," the conflict of interest involving Doctor Davis, for example, was pointed out; however, the motion was denied as "frivolous" on September 12, 1979; reference Chiarelle v. U.S., 100 S. Court, 1108 (1980).

On November 8, 1979, 79-8074; a motion was filed with the U.S. Supreme Court to proceed in forma pauperis for a writ of certiorari. This motion was denied on January 7, 1980; and on February 19, 1980, 79-8074; the petition for a rehearing was also denied.

After the Supreme Court denied the appeal on January 7, 1980, the Appellant reasoned that the appeal in forma pauperis was over, or behind him for the most part; that the case had not been fairly disputed or decided, and that something more

or different had to be done, in order to correct the injustice. Unlike before, the Appellant was now working, and had managed to save a small portion of his income, and this money could be used to help finance the action. With regards to the ulcer, the stress of not doing anything would more likely cause the ulcer to bleed, than the stress of trying to continue a single action in pro se. By continuing the action in the form of pro se, this would prevent the Appellee from using its wealth and power within the community to tempt or corrupt an honest attorney that might be willing to take the case on behalf of the Appellant, and on a contingency basis.

On February 14, 1980, 76-511-C; the Appellant filed, with the district court, a pro se motion for a new trial, or a reversal of the final judgment. Reference

Bank of California v. Arthur Andersen & Co., 709 F.2d 1174 (1983); and Foley v. U.S., 645 F.2d 155 (1981).

On March 14, 1980, the Appellant filed a motion to amend the above action, and a total of seven questions were presented. Since the District Court has quoted these questions in its Entry of December 10, 1981, see Page 53. Between the period of February 14, 1980, and September 9, 1980, other post-trial motions were filed. Each motion is cited in the above Entry, see Page 49. One such motion included an adoption of a revised jury selection, submitted on June 6, 1980, for example.

On September 10, 1980, the district court denied all the post-trial motions, and all other relief on the grounds that it no longer had jurisdiction over the case. Reference Fairview Park Excavating

Co., v. Al Monzo Construction Co., 560 F.2d 1122 (1977); and the Fifth and Fourteenth Amendments to the U.S. Constitution.

On September 17, 1980, 80-2363; an appeal was filed with the Seventh Court of Appeals; and on October 20, 1980, this question was presented in the supporting brief:

> If 'new evidence' will support a finding, or raise a substantial question, that the Plaintiff's civil and/or constitutional rights were violated as a result of fraud, a conspiracy, or any other circumstance that denied substantial justice; then what relief is the Plaintiff due?

On February 2, 1981, the Seventh Court of Appeals vacated the order of the discourt, entered on September 10, 1980; denied a motion to dismiss the case, and remanded the case with instructions to

enter a judgment based on the merits of the post-trial motions.

On December 10, 1981, 76-511-C; the district court denied all the post-trial motions on the grounds that they were untimely filed, that most constituted an impermissible effort to relitigate the matters that were adjudicated at trial, and that the Plaintiff's allegations of fraud are unfounded. Reference Chiarelle v. U.S., 100 S. Court, 1108 (1980).

On December 29, 1981, 81-3078; the Appellant appealed to the Seventh Court for relief; and, on January 29, 1982, these questions appeared in the Appellant's brief:

> If, by denying the post-trial motions a second time, the District Court either denied them in error, abused its authority, or failed to make an objective determination; then what relief is the Plaintiff due?

> If, prior to filing the post-trial motions, the Plaintiff were denied the Constitutional rights of either equal protection of the law, due process, and/or the right to a fair trial; then what relief is the Plaintiff due?

On March 13, 1982, 81-3078; this question was presented in the Appellant's reply brief:

> Relative to the current application of Rule 60(b), what relief is the Plaintiff entitled?

On August 11, 1983, 81-3078; the Seventh Court entered an order affirming the entry of the district court, which denied the post-trial motions, and all other relief. The Seventh Court expressed the opinion that the post-trial motions were untimely filed, that the jury's verdict is supported by reasonable evidence, that that the allegations of fraud are without merit, and that the Appellant has not

shown that the district abused its discretion in denying the post-trial motions and other relief. Reference Bank of California v. Arthur Andersen & Co., 709 F.2d 1174 (1983); Foley v. U.S., 645 F.2d 155 (1981); Steinhoff v. Secretary of Health & Human Services, 502 F. Supp. 1313 (1980) and Wink v. Rowan Drilling Co., 611 F.2d 98 (1980); also reference 42 U.S.C., Section, 1981.

On or about September 6, 1983, 81-30-78; a notice of appeal was filed with the Seventh Court. This action follows within the Supreme Court of the United States.

SUBSTANTIALITY OF FEDERAL QUESTIONS

First, the manner in which the lower courts have ruled in this case gives the impression that the Appellant, other minorities, including blacks, must present

more evidence at trial, appeal, or both, in order to prevail - when compared with similarly situated whites. In this case, the treatment that was imposed on the Appellant, by the Appellee, was compared with the treatment that was imposed on the most similarly situated white employee to the Appellant, for the same period of employment; and the Appellant was consistently treated adversely. Race is the only real difference. To make matters worst, the Appellee even admitted that an agreement was made to engage in racial discrimination towards the Appellant; yet, the Appellant is still seeking relief from a judgment that was entered in error. Reference McDonald & Laird v. Santa Fe Transportation Co., 427 U.S. 327 (1976); Title 42, U.S.C., Sections 1981, and 2000e-2, and the Fourteenth Amendment to the U.S. Constitution.

Second, the important question of whether blacks living in Marion County, Indiana, the county where both the Appellant and Appellee are currently located, and have been located for the past 25 years at least; were systematically excluded from jury duty at the time of the trial, in April, 1979, must be clarified. Since the same jury selection process is currently being used, the clarification of this question becomes even more important.

To help answer this question, the 1970 U.S. Census was consulted: V-1, Part 16, "Population Characteristics," Pages 156-8. To this extent, the population of the 26 counties that made up the Indianapolis Division, of the Southern District, was determined. The total black and white population for the Indianapolis Division was about 1,964,520 persons; and, about

163,178 were black, or about 8% of the population were black.

In regards to Marion County, one of 26 counties that make-up the Indianapolis Division, it had a total black and white population of about 792,299 persons; and, about 134,486 were black, or about 17% of the population were black.

Since the total black population for the Indianapolis Division amounted to about 163,178 persons, and since about 134,486 blacks were living in Marion County at the time; it follows that about 82% of the blacks that lived in the Indianapolis Division, also lived in Marion County; yet, the great majority of jurors are selected from populations outside of Marion County, Indiana. This is how blacks living in Marion County are systematically excluded from jury duty.

The irony here is that while little black and white school children are being bused to various parts of Marion County, to achieve a racially integrated school system; the black parents of these same children are being systematically excluded from jury duty. If the present jury selection process is allowed to continue, then the above children, when they become adults, will be systematically excluded from jury duty also.

At trial, however, the Appellant objected to the "all white" jury, or that blacks had been excluded. The district court answered the objection by first calling the Appellant a "paranoid egoist," and second, forcing him to accept the jury anyway. After hearing evidence that the Appellee formed an agreement to discriminate towards the Appellant because of his race, and before ruling in favor

of the Appellee, the jury sent the district court this question:

> Instruction No. 20. You have handed me a note reading as follows:
>
> 'Is it possible to make a decision rendering unjust termination but not because of racial discrimination?'
>
> The answer to your question is 'No.'

After the "all white" jury ruled in favor of the Appellee, the District Judge, Dillin, immediately stated in open court that the verdict could have easily gone the other way. Reference Bob Jones University v. U.S., 76 L Ed 2d 157 (1983); Morgan v. U.S. 696 F.2d 1239 (1983); U.S. v. Clifford, 640 F.2d 150 (1981); and U.S. v. Layton, 519 F. Supp. 946 (1981); Title 28, U.S.C., Sections 1861, and 1862; and Title 42, U.S.C., Sections 1981, 1983, and 2000e-2.

CONCLUSION

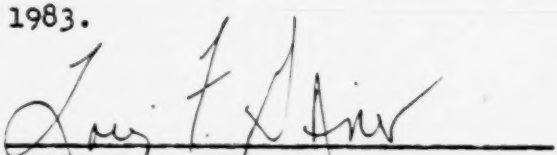
Based on the above, the Appellant has clearly been denied "equal protection of the law," and this case should be given plenary review. The Appellee's willful and admitted acts of racial discrimination towards or against the Appellant has caused him to suffer both needless and senseless pain. The Appellant cannot be made "whole," because the ulcer is a permanent injury; the psychic injuries might prove to be the same. Reference Title 42, U.S.C., Sections 1981 and 2000e-2; and the Eighth and Fourteenth Amendments of the United States Constitution.

Respectfully submitted on October 20, 1983.

LOUIS F. GAINES, Pro Se
5337 North College Avenue
Indianapolis, Indiana 46220
317--283-4821

PROOF OF SERVICE

This is to certify that a copy of this Jurisdictional Statement was mailed to the Appellee's Attorney, Mr. James A. Strain, 1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Indiana, 46204; on Octo-20, 1983.



LOUIS F. GAINES, Pro Se
5337 North College Avenue
Indianapolis, Indiana 46220
317--283-4821

APPENDIX

ORDERS OF THE SEVENTH COURT

UNITED STATES COURT OF APPEALS
For The Seventh Circuit

August 11, 1983

LOUIS F. GAINES,
Plaintiff-Appellant,

No. 81-3078 v.

MERCHANTS NATIONAL BANK & TRUST COMPANY,
Defendant-Appellee

ORDER

In 1976, Louis Gaines brought the present action against the Merchants National Bank & Trust Company, alleging racial discrimination related to his employment with Merchants Bank. Subsequently, after a five-day jury trial at which Gaines was represented by counsel, a jury found in favor of the defendant. Gaines' motion for leave to appeal in forma pauperis was denied by both the district court and this Court. No subsequent direct appeal was filed.

Beginning on February 14, 1980, Gaines filed the first of a series of 21 post-trial motions. In one order, the district court denied all of the motions, relying upon three separate grounds. The court first reasoned that none of the motions had been filed within a reasonable time; second, the motions

constituted an impermissible effort to relitigate matters which had been previously adjudicated at trial; and third, Gaines' various allegations were unfounded. This appeal followed.

Our scope of review of a denial of a Rule 60(b) motion is quite limited. Our court has stated that a Rule 60 motion cannot be used as a substitute for an appeal. De Filippis v. United States, 567 F.2d 341, 342 (7th Cir. 1977). To be entitled to post-judgment relief, there must be a showing of exceptional circumstances or of a grevious wrong evoked by new and unforeseen circumstances. Id. In reviewing a denial of a motion for relief under Rule 60(b), we are limited to deciding whether the judge abused his discretion. Brennan v. Midwestern United Life Insurance Co., 450 F.2d 999, 1003 (7th Cir. 1971), certiorari denied, 405 U.S. 921 (1972).

In the immediate case no such abuse of discretion exists. The record reveals that Gaines did not file his first Rule 60(b) motion until nine and one-half months after the district court entered judgment on jury's verdict and then offered no explanation to the district court for his delay in seeking relief. Moreover, Gaines essentially asked the district court to reconsider the jury's verdict. Questions such as credibility and weight of the evidence are within the purview of the jury, see Pinkowski v. Sherman Hotel,

313 F.2d 190, 193 (7th Cir. 1963), and where there exists a reasonable basis in the record supporting the jury verdict, the evidence must not be reweighed. See Lenard v. Argento, 699 F.2d 874, 882 (7th Cir. 1983). In this case a reasonable basis exists in the record to support the jury's verdict. As a final matter, we find no abuse of discretion in the district court's conclusion that Gaines' assertions of newly discovered evidence and fraud were without merit. As the district court noted, all of the alleged newly discovered evidence either could have been discovered prior to judgment through the exercise of due diligence or was too tenuous to have affected the outcome of the trial.

Accordingly, Gaines has not shown that the district court abused its discretion in denying his motions. The order of the district court is therefore AFFIRMED.

UNITED STATES COURT OF APPEALS
For The Seventh Circuit

February 2, 1981

LOUIS G. GAINES,
Plaintiff-Appellant,

No. 80-2363 v.

MERCHANTS NATIONAL BANK & TRUST COMPANY,
Defendant-Appellee

ORDER

This matter comes before the court for its consideration upon the following documents:

1) 'MOTION TO DISMISS APPEAL' filed herein on November 24, 1980 by counsel for the defendant-appellee.

2) 'BRIEF IN SUPPORT OF MOTION TO DISMISS APPEAL' filed herein on November 24, 1980 by counsel for the defendant-appellee.

3) 'MOTION TO SUSTAIN THE APPEAL' filed herein on November 25, 1980 by pro se plaintiff-appellant Louis F. Gaines.

A review of the record in this case for the purpose of deciding

the motion to dismiss has revealed that the District Court, the Honorable S. Hugh Dillin presiding, erred when it denied plaintiff-appellant's post-trial motions, including a motion for new trial under F.R. Civ. P. 59 and motion for relief from judgment under F.R. Civ. P. 60(b), on jurisdictional grounds without reaching the merits.

This court's order of September 12, 1979, denying plaintiff-appellant leave to proceed in forma pauperis, did not deprive the District Court of jurisdiction to consider those motions. Under the Federal Rules of Appellate Procedure in effect at that time that order merely precluded the docketing on the General Dockets of the Miscellaneous Appeal Number 79-8074 without payment of fees. Since those fees were never paid, the appeal was not docketed on the regular docket and the record was returned to the District Court without decision or mandate. (R. 8) In light of the above,

IT IS ORDERED that the motion to dismiss the above-captioned appeal is hereby DENIED, the District Court order of September 10, 1980 is VACATED, and the case is REMANDED to the District Court with instructions to consider and enter a judgment on the merits of plaintiff-appellant's post-trial motions.

ORDERS OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

December 10, 1981

LOUIS F. GAINES,
Plaintiff,

No. IP 76-511-C v.

MERCHANTS NATIONAL BANK & TRUST COMPANY,
Defendant

ENTRY

This case is before the Court on numerous post-trial motions of plaintiff, Louis F. Gaines. For the reasons stated below, those motions are denied.

Background

On September 10, 1976, the plaintiff filed this action against defendant, Merchants National Bank & Trust Company of Indianapolis, alleging racially discriminatory action against him during and after his employment with Merchants. In April 1979, after a five-day jury trial at which the plaintiff was represented by counsel, the jury found for the defendant. The Court

entered judgment on the verdict on April 30, 1979.

On May 14, 1979, the plaintiff moved for leave to proceed on appeal in forma pauperis. On June 22, 1979, the Court denied the motion, finding that the great weight of the evidence supported the jury verdict and certifying that the appeal was not taken in good faith. The plaintiff filed a motion to appeal in forma pauperis with the Court of Appeals for the Seventh Circuit. On September 12, 1979, the Seventh Circuit denied the motion, finding that an appeal from the jury verdict was frivolous. The plaintiff then petitioned the United States Supreme Court for a writ of certiorari, which was denied on January 7, 1980. The plaintiff's petition for rehearing was denied on February 19, 1980.

Beginning on February 14, 1980, the plaintiff filed the following documents:

> Motion for a New Trial or a Reversal of the Final Judgment, February 14, 1980.
>
> Motion to Amend Petition for a New Trial or the Reversal of Final Judgment, March 14, 1980.
>
> Motion to Admit Additional Evidence, March 20, 1980.
>
> Notice to the Court, March 20, 1980.

Motion for the Production and Inspection of Documents, April 23, 1980.

Motion for Excerpts from trial transcript, April 23, 1980.

Motion to Perpetuate Testimony of Expert Witness, May 2, 1980.

Motion to Perpetuate Testimony of Mrs. Bock, May 15, 1980.

Motion to Admit Plaintiff's Second Affidavit, May 23, 1980.

Plaintiff's Second Affidavit, May 23, 1980.

Motion to Admit Supplemental Evidence, May 23, 1980.

Motion to Adopt Revised Jury Selection Plan, June 6, 1980.

Motion to Take the Testimony of Absent or Recalcitrant Witness, June 13, 1980.

Motion to Admit Statement of Damages, June 20, 1980.

Plaintiff's $300.00 Deposit for Excerpts, July 11, 1980.

Motion to Admit Impeaching Medical Evidence, August 15, 1980.

Motion to Correct Clerical Mistakes, August 15, 1980.

Motion to Show Additional Evidence of Racial Discrimination in Psychological Evaluation, August 15, 1980.

Motion to Admit Evidence of Plaintiff's Psychological Habit, September 5, 1980.

Request for Admission, September 5, 1980.

Plaintiff's Redeposit of $300.00 for Excerpts of Trial Transcript, July 7, 1981.

On September 10, 1980, the Court denied all these motions, except the last one, holding that it lacked jurisdiction over the case. The plaintiff appealed, and on February 2, 1981, the Seventh Circuit reversed, holding that this Court did have jurisdiction, and remanded for consideration of the motions on their merits.

In his Motion to Amend Petition for a New Trial or the Reversal of Final Judgment, the plaintiff refers the Court to an accompanying brief. In that brief he lists the following questions for review:

'If, without the Plaintiff's permission or knowledge, the

the Defendant formed an agreement to extend preferential treatment to the Plaintiff because of his race, black, and if the Plaintiff were made to suffer adverse treatment instead - then did the all white jury error in finding the Defendant not guilty of racial discrimination? (1)

If, at the time of the termination, the Defendant assured the Plaintiff that it would not give him a bad employment reference or try to stand in his way of gaining future employment, but then refused to either release employment references, released false information about the Plaintiff, or released information that the Plaintiff had filed a discrimination complaint against it -- then did the district court error in dismissing the retaliation issue? (2).

If the Plaintiff can trace the injury to person: a bleeding ulcer and psychic injuries, to the Defendant as being the cause or most probable cause -- then is this sufficient grounds to hold the Defendant accountable for such injuries? (3)

If the jury selection process excluded blacks, or if the Plaintiff objected to an 'all white' jury hearing and deciding the case, but was forced to accept

such a jury by the Court -- then did such a process deny the Plaintiff equal protection of the law, or due process? (4).

If the Court, at trial, declared the Plaintiff to be 'mentally ill' and therefore 'incompetent,' and if the Court then allowed the Plaintiff to take the witness stand in his own behalf, after being declared to be 'mentally ill' -- then did such a process deny the Plaintiff equal protection of the law, or due process? (5).

If one of the Plaintiff's expert medical witnesses privately told the Plaintiff that he could see that the Plaintiff is under stress, that he did not have any doubt in his mind that the Defendant is the cause or most probable cause of the Plaintiff's ulcer injury, and if this same witness refused to repeat such a statement for the record, or at trial; and if it can also be shown that the hospital that employed this witness at the time of the trial, Community, and the Defendant shared the same chairman of the board, which was not made known to the Plaintiff until after the trial-- then did such a circumstance or events deny the Plaintiff due process or equal protection of the law? (6).

> If the Plaintiff's attorney conducted himself in a way that caused or played a major role in causing the Plaintiff to be declared 'mentally ill' at trial, and if such conduct included deceit, coercion, and various forms of misrepresentation at trial -- then did the Court error in declaring the Plaintiff to be 'mentally ill,' and placing the Plaintiff under the guardianship of the attorney; or, did such court action deny the Plaintiff due process or equal protection of the law? (7)

The plaintiff also refers throughout his motions to three types of supposed fraud which he claims entitle him to relief. They are (1) the alleged discrimination practiced by the defendant, (2) the testimony of several witnesses at trial, and (3) the manner in which his attorney conducted his case at trial. The first claim duplicates the racial discrimination charge made in the first paragraph quoted above; the last two overlap somewhat with the assertions of paragraphs six and seven.

Discussion

None of the plaintiff's motions has merit. All are denied for the following reasons: first, none was filed within a reasonable time;

second, most constitute an impermissible effort to relitigate matters which were adjudicated at trial; and third, the plaintiff's allegations of fraud are unfounded.

I. The plaintiff's post-trial motions were not filed within a reasonable time.

The plaintiff's motion for a new trial is governed by Rule 59, F.R. Civ.P., which required that such a motion be served within ten days of judgment. The plaintiff's motion was filed February 14, 1980, nine and one-half months after the Court entered judgment on April 30, 1979. It obviously fails to meet the requirement of Rule 59, and is therefore dismissed.

In the same motion, the plaintiff requested that, in the alternative, the judgment of the April 1979 trial be reversed. Motions for relief from judgment are governed by Rule 60(b), F.R.Civ.P., which requires that such motions be filed within a reasonable time. The plaintiff has not attempted to explain or justify his delay of nine and one-half months since entry of judgment. The delay cannot be excused on the basis of recent discoveries by the plaintiff, since he was aware, immediately upon judgment, of all the issues raised in his motions except an alleged conflict of interest on part of a witness. Nor can the

delay be justified by the pendency of an appeal; Rule 60 motions may be brought while an appeal is pending. United States v. Ellison, 557 F.2d 128, 132 (7 Cir.), cert. den., 434 U.S. 965, 98 S. Ct. 504, 54 L.Ed.2d 450 (1977), and cases cited therein.

An unexplained delay of nine and one-half months is not a reasonable time for the purpose of a Rule 60(b) motion. The Court notes the decision of the Seventh Circuit Court of Appeals in Di Vito v. Fidelity & Deposit Co., 361 F.2d 936 (7 Cir. 1966), where the Seventh Circuit affirmed the district court's denial of relief from the judgment. One of the reasons it did so was that the movant 'offered no convincing explanation of its four and one-half month delay, after discovery of what it now asserts to be significant evidence of fraud, before filing its motion.' Id. at 939. For similar reasons, the plaintiff's motion requesting relief from the judgment, and his other motions in furtherance of that purpose, are denied.

II. Post-trial motions may not be used to relitigate issues resolved at trial.

The plaintiff lists seven issues for review in his Brief in Support of Petition for a New

Trial, or the Reversal of the Final Judgment. They are quoted at Pages 3 and 4. The first and third are questions of fact; the second, fourth and fifth are legal issues. The plaintiff refers to the questions of fact in the following documents: Motion to Admit Additional Evidence; Plaintiff's Second Affidavit; Motion to Admit Supplemental Evidence; Motion to Admit Statement of Damages; Plaintiff's $300.00 Deposit for Excerpts; Motion to Admit Impeaching Medical Evidence; Motion to Show Additional Evidence of Racial Discrimination in Psychological Evaluation; Motion to Admit Evidence of Plaintiff's Psychological Habit. He refers to legal issues in the following documents: Brief in Support of Motion to Admit Supplemental Evidence; Motion to Adopt Revised Jury Selection Plan; Motion to Show Additional Evidence of Racial Discrimination in Psychological Evaluation; Motion to Admit Evidence of Plaintiff's Psychological Habit.

All these motions are inappropriate. They can only be construed as motions for relief from judgment under Rule 60(b); as such they constitute impermissible attempts to relitigate issues resolved by the Court's earlier judgment. The merits of the plaintiff's suit were fully considered and decided against him at trial. Any claim that the Court committed errors of law must be made through

a motion for a new trial, filed within ten days after entry of judgment, Rule 59(b), F.R.Civ.P., or through an appeal, which has already been denied in this case. As the Seventh Circuit stated in De Filippis v. United States, 567 F.2d 341 (7 Cir. 1977):

> 'A Rule 60(b) motion to vacate is not a substitute for an appeal .... Rule 60(b) provides for extraordinary relief. Because of the interest in finality of judgments, Rule 60(b) requires a showing of exceptional circumstances or a grievous wrong evoked by new and unforeseen conditions .... Rule 60(b)(5) does not allow relitigation of issues that have been resolved by the judgment.' Id. at 342, 343-344 (citations omitted).

In keeping with this principle, all of the motions mentioned in this section are denied.

III. The Plaintiff's allegations of fraud are unfounded.

The plaintiff uses the term 'fraud' rather loosely throughout his motions, applying to (1) the alleged discriminatory conduct by the defendant, (2) the the testimony of several witnesses at the trial, and (3) the conduct of his attorney. Not only are these

claims of fraud unreasonably delayed, see Section I of this Entry, but none of them possesses any substance.

As to the defendant's alleged discriminatory conduct: that conduct, even had it been proved at trial, does not constitute fraud within the meaning of Rule 60(b)(3). Furthermore, the defendant's actions toward the plaintiff were found non-discriminatory by the jury at trial; this issue may not be relitigated through a motion pursuant to Rule 60(b). See Section II of this Entry.

As to the allegedly fraudulent testimony of witnesses at trial (referred to in the Motion to Perpetuate Testimony of Expert Witness, the Motion to Perpetuate Testimony of Mrs. Bock, Plaintiff's Second Affidavit, the Brief in Support of Motion to Admit Supplemental Evidence, and the Motion to Admit Impeaching Medical Evidence): the plaintiff's claims regarding the testimony of four employees of the defendant, Mrs. Ruth Bock, Mrs. Mary Roti, Mrs. June Hundley and Mr. James Hughey, amount to little more than discontent that their testimony was not favorable. The plaintiff accuses all four of evaluating him too long after he left their supervision, or of having an insufficient basis on which to evaluate him. He also makes the unsupported accusation that Mrs. Bock drank while

working. Though some of these allegation may have relevance as to the weight given these witnesses' testimony, none constitute fraud.

The plaintiff's attacks on the testimony of his own expert witness, Dr. Larry M. Davis, are similarly without merit. His assertion that Dr. Davis had a conflict of interest because the defendant's chairman of the board is also a board member of Community Hospital, where Dr. Davis is a staff member, is too tenuous to be considered seriously. His reference to literature which suggests that the psychological test Dr. Davis administered may be racially biased would have been relevant as to the probative value of the test results, but does not make Dr. Davis's reliance on them fraudulent. Finally, his unsupported accusation that Dr. Davis's testimony was inconsistent with private statements Dr. Davis made to the plaintiff is insufficient to raise an issue of fraud. Even if an inconsistency were established, it would not affect the result of the trial - it relates only to the question of damages, not to whether the defendant's termination of plaintiff's employment was racially motivated.

As to the allegedly fraudulent conduct of the plaintiff's attorney (referred to in the Motion to Perpetuate Testimony of Expert Witness, the Brief in Support of

Motion to Admit Supplemental Evidence, the Motion to Take the Testimony of Absent or Recalcitrant Witness, and the Request for Admission): the plaintiff's accusations in this area are a result of his misunderstanding of and disagreement with his attorney's decision in conducting his case. The plaintiff's attorney did not abuse his discretion or conduct himself unprofessionally. Indeed, he made more than the usual number of concessions to the plaintiff, calling several witnesses at the plaintiff's insistence even though both were aware that the witnesses' deposition testimony was unfavorable to the plaintiff. None of the actions complained of by the plaintiff constitutes fraud under Rule 60(b)(3) or mistake, inadvertence, surprise or excusable neglect under Rule 60(b)(1).

None of the plaintiff's allegations of fraud has merit. Each of the post-trial motions, to the extent it contains those unfounded allegations, is denied.

IV. Some miscellaneous matters

A. Newly discovered evidence

Some of the matters raised by the plaintiff in his motions could be considered newly discovered evidence under Rule 60(b)(2).

They are:

1. A newspaper report, dated March 14, 1980, of actions taken by the defendant regarding three of its executives charged with misappropriation of funds (Motion to Admit Additional Evidence).

2. Dr. Davis' alleged conflict of interest (Brief in Support of Petition for a New Trial, or the Reversal of the Final Judgment; Motion to Admit Supplemental Evidence).

3. Excerpts from the book Clinical Gastroenterology, by Howard M. Spiro, M.D., purporting to establish a link between the defendant's conduct toward the plaintiff and the plaintiff's ulcer (Motion to Admit Impeaching Medical Evidence).

4. The claim in some psychological studies that the test given to the plaintiff may be racially biased (Brief In Support of Petition for a New Trial, or the Reversal of the Final Judgment).

None of these matters justifies relief from judgment. As to the first paragraph, it is well settled that a judgment may not be challenged on the basis of evidence which did not exist at the time of trial. Ryan v. United States

Line Co., 303 F.2d 430 (2 Cir. 1962); 11 C. Wright and A. Miller, Federal Practice and Procedure Sec. 2859 (1973). The only plausible use to which the other contentions could be put is the impeachment of the plaintiff's expert witness, Dr. Davis. Evidence which could be used only for impeachment cannot support a Rule 60(b) motion. Trans Mississippi Corp. v. United States, 494 F.2d 770 (5 Cir. 1974). To the extent the plaintiff's motion rely on newly discovered evidence, then, they are denied.

B. Post-trial discovery motions

The plaintiff has filed several motions seeking discovery. They are: Motion for the Production and Inspection of Documents; Motion to Perpetuate Testimony of Expert Witness; Motion to Perpetuate Testimony of Mrs. Bock; Motion to Take the Testimony of Absent or Recalcitrant Witness; Request for Admission. Given the Court's disposition of the plaintiff's other motions and the lengthy discovery which preceded the trial, it is clear that these motions are unnecessary and unjustified. On that basis, all are denied. See H.K. Porter Co. v. Goodyear Tire & Rubber Co., 536 F.2d 1115 (6 Cir. 1976).

C. Other pleadings

Some pleading remain to be addressed. They are listed below, with the Court's disposition:

1. Notice to the Court (March 20, 1980), notifying the Court of the dates the Supreme Court denied certiorari and rehearing: no disposition necessary.

2. Motion for Excerpts from Trial Transcript (April 23, 1980): denied.

3. Plaintiff's $300.00 Deposit for Excerpts (July 11, 1980): refused by the Court in its entry of September 10, 1980, with instructions to return $300.00 to the plaintiff.

4. Motion to Correct Clerical Mistakes (August 15, 1980): in reality a motion to amend Plaintiff's $300.00 Deposit for Excerpts and Brief in Support of Motion to Admit Statement of Damages. Denied.

5. Plaintiff's Redeposit of $300.00 for Excerpts of Trial Transcript (July 7, 1981): refused. The Clerk of the Court is directed to release to the plaintiff the $300.00 he deposited

Dated this 10th day of December, 1981.

S. Hugh Dillin,
Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

September 10, 1980

LOUIS F. GAINES,
Plaintiff,

No. IP 76-511-C v.

MERCHANTS NATIONAL BANK & TRUST COMPANY,
Defendant

ENTRY

On April 30, 1979, this Court entered judgment in this case following trial by jury. It was adjudged that plaintiff take nothing by his complaint. Plaintiff appealed, and on September 17, 1979, the Court of Appeals for the Seventh Circuit denied as frivolous plaintiff's motion for leave to appeal in forma pauperis.

Following the unfavorable verdict at trial and the denial of his motion for leave to appeal, Mr. Gaines has deluged the Court with reams of paper bearing various labels. The motions and the dates on which they were filed are as follows:

Motion for a New Trial

or a Reversal of the Final Judgment, February 14, 1980.

Motion to Amend Petition for a New Trial or the Reversal of Final Judgment, March 14, 1980.

Motion to Admit Additional Evidence, March 20, 1980.

Motion for Excerpts from Trial Transcripts, April 23, 1980.

Motion to Perpetuate Testimony of Expert Witness, May 2, 1980.

Motion to Perpetuate Testimony of Mrs. Boch, May 15, 1980.

Motion to Admit Plaintiff's Second Affidavit, May 23, 1980.

Motion to Admit Revised Jury Selection Plan, June 6, 1980.

Motion to Take the Testimony of Absent or Recalcitrant Witness, June 13, 1980.

Motion to Admit Statement of Damages, June 20, 1980.

Plaintiff's $300.00 Deposit for Excerpts, July 11, 1980.

Motion to Correct Clerical Mistakes, August 15, 1980.

Motion to Admit Evidence of Plaintiff's Psychological Habit, September 5, 1980.

Request for Admission, September 5, 1980.

Given the Court's entry of final judgment in April, 1979 and the denial of appeal by the Seventh Circuit, this Court has no jurisdiction over this matter. This Court has no power to rule on any motions or consider any papers concerning this case. Mr. Gaines cannot obtain any relief by filing motions with this Court. Therefore, all motions are denied, and the Clerk of the Court is directed to release to Mr. Gaines the $300.00 he has deposited with the Court.

Dated this 10th day of September, 1980.

S. Hugh Dillin,
Judge

UNITED STATES COURT OF APPEALS
For The Seventh Circuit

September 6, 1980

LOUIS F. GAINES,
Plaintiff-Appellant,

No. 81-3078 v.

MERCHANTS NATIONAL BANK & TRUST COMPANY,
Defendant-Appellee

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Louis F. Gaines, Plaintiff, hereby appeals to the Supreme Court of the United States the final order, which denied the post-trial motions and all other relief, that was entered in this action on August 11, 1983.

This appeal is taken pursuant to Title 28, United States Code, Section 2101; June 30, 1980.

LOUIS F. GAINES, Plaintiff
5337 N. College Avenue
Indianapolis, Indiana 46220
317--283-4821

CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITUTION:

Fifth Amendment:

> ..., nor be deprived of life, liberty, or property, without due process of law; ....

Eighth Amendment:

> ..., nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Fourteenth Amendment:

> ...; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES STATUTORY PROVISIONS:

Title 28, Section 2106:

> The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside, or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

Title 28, Section 1861:

> It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

Title 28, Section 1862:

> No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States or in the Court of International Trade on account of race, color, religion, sex, national origin, or economic status.

Title 42, Section 1981:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Title 42, Section 1983:

> Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the

United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress.

Title 42, Section 2000e-2(a):

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his statue as an employee, because of such individual's race, color, religion, sex, or national origin.

Title 42, Section 2000e-2(j):

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

Title 42, Section 2000e-3(a):

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

FEDERAL RULES OF CIVIL PROCEDURE:

Rule 9(b):

> In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other

condition of mind of a person may be averred generally.

Rule 27(b):

If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the discourt in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35,

and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

Rule 59:

(b) A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(e) A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

Rule 60(b):

On motion and upon such terms as are just, the court may relieve a party or his legal representative from final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has

been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., Section 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from judgment shall be by motion as prescribed in these rules or by an independent action.

FEDERAL RULES OF EVIDENCE:

Rule 103:

(a) Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(d) Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

Rule 104:

(a) Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(e) This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Rule 106:

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Rule 401:

'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402:

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

Rule 403:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 406:

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Rule 607:

The credibility of a witness may be attacked by any party, including the party calling him.

Rule 701:

If the witness is not

testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

Rule 702:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 803:

(4) Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(18) To the extent called to the attention of an expert witness upon cross-examination or relief upon him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence by may not be received as exhibits.

MEDICAL

JAMES A. HUNT, M.D., P.C.

St. Vincent Professional Building
8402 Harcourt Road Suite 708
Indianapolis, Indiana 46206

Telephone 257-6246

March 24, 1978

Mr. R. Davey Eaglesfield
309 Union Federal Building
Indianapolis, Indiana

Dear Mr. Eaglesfield:

On March 14 of this year I evaluated Louis Gaines for the purpose of establishing a cause for the ulcer disease he suffered in June of 1977. This evaluation is based on a one hour interview with Mr. Gaines.

Mr. Gaines reports that he was functioning quite well until August of 1975 when he was terminated suddenly from a position with a local bank. He states he had held that position for approximately 14 months. He recalls being quite angry and felt that he had been unjustly treated. He suspects that his termination involved some racial prejudice as well as some prior civil rights activity in which he had been involved. He describes feelings of anger, disappointment and stated he felt like he was 'robbed of his respect.'

He recalls feelings of depression with tearfulness and social withdrawal, increased fatigue and excessive sleeping. After approximately 5 months of being unemployed he began working as a caseworker for the Marion County Department of Welfare and was also terminated from this position 8 months later. The reasons for this termination are unclear to the patient other than he had been denied a promotion. He was again unemployed for 5 months before working as an adjuster for a local company. He recalls performing satisfactorily in this position and it was during this time that he suffered his ulcer disease. He reports that through this period however, he did experience a considerable stress relating to obtaining information and the procedures involved in the current law suit. He states in the months prior to the discovery of his ulcer disease he had occasional dark brown stools, gas pains and some periodic indigestion. Prior to August 1975 he denies any stomach discomfort.

If valid, the patient's history prior to August 1975 reveals that he has been well adjusted. He completed highschool as well as the Air Force where he received an honorable discharge and a good conduct citation for outstanding service. He graduated from college and did at times attain a dean's list standing. He denies

any previous physical problems prior to his bout with ulcer disease.

In summary if the history is valid it would appear that this man has functioned quite well until August 1975. Following this he has had numerous symptoms of anxiety and depression which are probably related to his unstable employment situation. His symptoms of increased sleeping, decreased sexual drive and excessive fatigue are consistent with a depressive illness and this is frequently associated in a patient with ulcer disease. It is difficult to accurately evaluate the association between his emotional state and his onset of ulcer disease in retrospect. There does not seem to be any determinable or specific stress in June of 1977 although he was certainly under chronic stress for many months prior to that. At this point and with the information available I can be no more definite.

Sincerely,

James A. Hunt, M.D.

JAH:cb

cc: Louis Gaines

MEMORIAL CLINIC OF INDIANAPOLIS
3266 North Meridian Street
Indianapolis, Indiana 46208
Telephone 317--924-6131

April 11, 1978

TO WHOM IT MAY CONCERN

Re: Mr. Louis Gaines

This is to state that we had the pleasure of seeing Mr. Gaines here.

He stated to be 32 years old and having had epigastric pain since August of 1975. This has been mostly related to an emotional upset. He has had some variation in the color and consistency of the stools at times. He has had occasional nausea but no vomiting or melena. However, he had one instance of vomiting with possibly some dark reddish color. He has had difficulty sleeping because of pain at times but he usually doesn't get awakened by pain in the middle of the night. He was hospitalized in 1977 and a peptic ulcer was found. He has been on treatment and no more severe pain has been noticed.

Review of Symptoms: Occasional headaches especially in the back of the neck. No ENT problems and no urinary problems.

Medical History: Otherwise non-contributory.

Operations: None.

Smoking: Negative. Alcohol: Negative. Coffee: Negative. Allergies: Penicillin.

Physical Examination: The blood pressure was 140/80, pulse 80 and weight 198 pounds. He was a well-developed gentlemen in no acute distress. The abdomen was soft but not tender.

Gallbladder X-ray: Normal. Stomach: Coarse gastric mucosa, deformed duodenum consistent with ulcerative disease, apical ulcer scar present. Barium Enema: Negative. Chest: Negative.

T-4: 8.2. Triglycerides: 232. Chemicals as attached, within normal limits.

EKG: Normal.

The chart of July 10, 1977 was reviewed and it was found that he had transfusions because of a bleeding duodenal ulcer.

Due to this, we can establish that he has peptic ulcer disease and anxiety reaction.

It will be convenient for him to avoid stress situations and if necessary, to undergo psychotherapeutic treatment.

Based on the results of this examination and the patient's statements, we can establish that he never experienced any serious stomach pain prior to August of 1975. He denied the consumption of intoxicating beverages.

If his habits continue stable after that time, it is conceivable that some drastic changes could have taken place in his life pattern which could be indirectly contributory to an ulcer disease. With the exception of the patient's present ulcer, his state of health is excellent.

On comparison of the present x-rays with the previous ones, it could be stated that there has been a considerable improvement in his condition.

He is to continue with his present ulcer plan of Librax t.i.d. or Donnatal and Titralac Tablets and an ulcer diet which has been of benefit to him.

If we can be of further help in his case, please contact me.

Yours truly

J. N. Tord, M. D.

JNT/bh
encl:

WARREN H. PALMER, Ph. D.
5675 N. Pennsylvania Street
Indianapolis, Indiana

PSYCHOLOGICAL EVALUATION

Patient's Name: Gaines, Louis
Age: 33
Date Tested: 10/13/78
Referred By: Larry M. Davis, M.D.
Current Status: Out-patient
Test: MMPI

The following is a blind interpretation without clinical interview and should be regarded with appropriate caution. The patient appears to have responded truthfully to inventory items. There are indications of only minimal subjective distress in the form of depression or anxiety. He presents himself as socially comfortable and free from anxiety. He has mild impairment of insight and may be somewhat eccentric in his values and interests. Judgement may be seen by others as unreasonable. The major clinical features are moderate to severe anger, resentment, and suspiciousness. This suspiciousness is likely to be severe but may not be of psychotic proportions. It is certain to interfere with his personal relationships and is likely to contribute to his being seen by others as irritable, hostile, and easily offended. If he is

undergoing situational distress which would account for the suspiciousness it may lessen with time or treatment. If, however, he has a history of suspicious behavior, the present data are likely to represent paranoid personality. Under greater stress paranoid thought disorder would result. Projection of blame and denial are the major defenses. He endorsed certain items which indicate possible sex problems, ideas of reference, alcohol abuse, thoughts of being controlled by others, and anxiety. These items should be reviewed with the patient before determining their meaning. Many passive-aggressive behaviors are likely as he is somewhat passive and unassertive. He may be more directly hostile if intoxicated.

Diagnostic Impression: Mild anxiety and a paranoid personality/ passive-aggressive personality.

Warren H. Palmer, Ph.D.
Clinical Psychologist

WHP/jn

Noted
LMD

DAVIS PSYCHIATRIC CLINIC, INC.
1431 North Delaware Street
Indianapolis, Indiana 46202
Phone 317--643-9930

November 6, 1978

Dave Eaglesfield, Esq.
45 N. Pennsylvania
Indianapolis, Indiana

Re: Mr. Louis Gaines

Dear Mr. Eaglesfield:

At the insistence of Mr. Gaines, I am writing you a letter summarizing my impression of him from the interview dated October 20th, 1978; a couple of phone conversations we had on November 1st, 1978 and an MMPI (Minnesota Multiphasic Personality Inventory) taken on Octo-13th, 1978. I've also reviewed detailed materials that he has presented.

I have attached a copy of the MMPI evaluation by Warren Palmer, Ph.D. which reveals a diagnosis of paranoid personality. Generally, the MMPI suggests he responded truthfully and that he has moderate to severe anger, resentment and suspiciousness of others. He is likely to come across to other people as irritable and easily offended. Part of this may be do to the situational distress of feeling wrong by Merchants National Bank

and to that extent his suspiciousness may lessen with time. Projection blame onto others and denying his own difficulties are major defenses in the testing.

In the interview, Mr. Gaines insists that he was well adjusted and not especially suspicious prior to events which culminated in his being terminated by Merchants National Bank, which is the issue of the case at hand. He has no awareness of any behavior on his part which would have justified a termination or even a complaint from a client of the bank. Furthermore, he feels that Merchants National Bank continued to 'retaliate' including having one of their people observe him in secret. The later event is one of the things he has documented in the papers that he has prepared and presented to both you and I. He states that the profound stress and what he believes to be the ruin of his professional life by Merchants National Bank led to such worry and concern that he acquired a bleeding gastric ulcer from which brief hospitalization was necessary. He continues to complain of stomach distress and has to adjust his diet to avoid spicey foods, etc. He feels that all of his difficulties in the past several years are due to the termination of Merchants National Bank including a subsequent termination by the Welfare Department of Indiana.

To the extent that he represents

a paranoid personality, he was especially vulnerable to anxiety feelings of rejection and retaliation following termination by Merchants National Bank. In other words, his underlying personality structure predisposed him to an unusually severe response to being terminated. One of the manifestations of this severe response was the previously mentioned ulcer. He states that in the last year he has applied to numerous jobs and has a stack of letters of rejection which he feels have also been influenced either actively or passively by the staff of Merchants National Bank. It is my opinion that the termination by Merchants National Bank was a severe stress to Mr. Gaines because of his make-up.

I have explained my impressions and recommendations in considerable detail to Mr. Gaines, including interpretation of the MMPI and have shared my impressions to the extent of agreeing to send him a copy of this letter. If I can be of any further service in this case, please notify me.

Sincerely,

Larry M. Davis, M.D.

/jw

WHITE NORMS AND BLACK MMPIs: A Prescription For Discrimination?

Malcolm D. Gynther
Saint Louis University

A review of the literature disclosed distinctive differences between MMPIs of blacks and whites. Differences in social desirability ratings of items and disproportionate representation of black-favored items on the key scales partially account for these findings. Furthermore, education, residence, and cultural separation influence the degree of difference found. However, blacks, whether normal or institutionalized, generally obtain higher scores than whites on Scales F, 8, and 9. Item and factor analyses reveal that these differences represent differences between blacks and whites in values, perceptions, and expectations rather than differences in level of adjustment (as a traditional interpretation of the findings would imply). The principal value exhibited by blacks has been labled distrust of society or social cynicism. Studies undertaken for this paper suggest that prospective black employees are disadvantaged when the MMPI is used for screening and that black psychiatric patients are less likely than whites to be diagnosed accurately by the MMPI. Various solutions to this problem are discussed; the most

satisfactory approach appears to be construction of an MMPI based on black norms.

Source: Psychological Bulletin, 1972, Vol. 78, No. 5, 386-402.

Request for reprints should be sent to Malcolm D. Gynther, Department of Psychology, Saint Louis University; Saint Louis, Missouri 63103.

EMPLOYMENT

MERCHANTS NATIONAL BANK
& TRUST COMPANY OF INDIANAPOLIS

Inter-Office Memorandum

TO: Louis F. Gaines 3/31/75

FROM: R.A. Cantin

RE: Your Memo Of March 28, 1975

Lou, we appreciate very much the fine job that you did for us while working in our Collection Department. Your thoughts and recommendations are especially helpful and have been forwarded to Bob Kivett, our Training Director. I am sure your memo will have a bearing on the establishment of a time frame for the management trainees to spend in the Collection Department. Your positive attitude and approach to the Collection area was most gratifying.

R.A. Cantin

RAC: ds

cc: Bob Kivett, John Koontz, Joe Kiefer, & Bob Cassman

MERCHANTS NATIONAL BANK
& TRUST COMPANY OF INDIANAPOLIS

Inter-Office Memorandum

June 4, 1975

TO: Kenny Carr

FROM: R. Bock, Administrative Assistant

RE: Louis Gaines

Mr. Gaines was sent to replace Mr. Cooley while on a weeks vacation. He was here only two days so my observation was limited to two days. I feel Mr. Gaines needs much more training as an assistant manager. Example, Mr. Gaines seemed unaware that a customer could borrow against a PIC and borrow the funds instantly putting the PIC's up for collertal. Knowing somethings however greatly confused.

Mr. Gaines was very polite and mannerly.

Ruth Bock

MERCHANTS NATIONAL BANK
& TRUST COMPANY OF INDIANAPOLIS

Inter-Office Memorandum

TO: Personnel File 12/15/75

FROM: Jim McAtee

RE: Louis Gaines

Louis called at 1:15 and inquired to the fact if I were aware of the complaint filed against Merchants by the Commission On Human Rights in his behalf. After my acknowledgement, he asked if I were giving this information to other employers asking for a reference. I replied, 'No, that at this point we have not given that information to inquiring employers.' I then told Louis that if we could be of help any other way to please contact us.

Louis seems to be concerned that Merchants is giving him a bad reference after being told by Dick Klawun, upon Louis' termination, that he would be given a good reference. I tried to assure Louis that we were not trying to stand in his way of gaining employment.

cc: Bob Highfield Jim

AMERICAN STATES INSURANCE
500 North Meridian Street
Indianapolis, Indiana 46207

October 15, 1976

Re: Reference Check On
Louis F. Gaines

To: Merchants Bank
11 S. Meridian
Indianapolis, IN 46204

Paul Pitz of American States Insurance Co. called in reference to the total circumstances involved in Louis Gaines' employment and termination.

I indicated that Gaines had been employed as a Management Trainee and had been terminated due to unsatisfactory job performance.

I further related to him that Gaines was unhappy with Merchants because of the termination and had filed a charge of discrimination against the bank.

10/18/76 Clifford B. Spears,
V. P., Personnel,
Merchants National
Bank

AMERICAN STATES INSURANCE
500 North Meridian Street
Indianapolis, Indiana 46207

October 21, 1976

Mr. Louis F. Gaines
5337 North College
Indianapolis, Indiana 46220

Dear Mr. Gaines:

We would like to thank you for your application for employment. Your interest in the American States Companies is appreciated.

Your credentials have been carefully reviewed and evaluated. Although your qualifications reflect excellent accomplishments, we feel that we cannot make the best use of your abilities at this time.

We will keep your application on file in the event of future needs. Again, our thanks for your consideration.

Sincerely,

Dan W. Guio
Employment Manager

DWG/kj

PAUL HARRIS STORES, INC.
6003 Guion Road
Indianapolis, Indiana 46268
Phone 317--293-3900

June 14, 1978

R. Davy Eaglesfield, III
Attorney At Law
309 Union Federal Building
Indianapolis, IN 46204

Dear Mr. Eaglesfield:

In checking our records, we find the attached application made by Louis F. Gaines on November 26, 1976. We received no response to a reference request letter sent to Merchants bank, as noted by the absence of reference material on the back of the application form. Mr. Gaines was not hired because other, more qualified applicants were found.

I certify that the information above is accurate and complete to the best of my knowledge.

Ken Mahlke
Director of Personnel

KM/dw

6/14/78

Elizabeth M. Dorsey,
My Commission Expires April 4, 1980.

END OF DOCKET